

VZCZCXRO5106  
PP RUEHBZ RUEH DU RUEHGI RUEHJO RUEHMR RUEHRN  
DE RUEH KI #0129/01 0321424  
ZNR UUUUU ZZH  
P 011424Z FEB 07  
FM AMEMBASSY KINSHASA  
TO RUEHC/SECSTATE WASHDC PRIORITY 5532  
INFO RUEHXR/RWANDA COLLECTIVE  
RUCNSAD/SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
RUEAIIA/CIA WASHDC  
RHEFDIA/DIA WASHDC  
RHMFISS/HQ USEUCOM VAIHINGEN GE  
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK

UNCLAS SECTION 01 OF 03 KINSHASA 000129

SIPDIS

SENSITIVE  
SIPDIS

E.O. 12958: N/A  
TAGS: [PGOV](#) [KJUS](#) [PHUM](#) [KPKO](#) [CG](#)  
SUBJECT: CONGOLESE MILITARY JUSTICE FIGHTING AN UPHILL  
BATTLE

11. (SBU) Summary. The numerous obstacles to effective application of military justice in the Congo are in stark evidence in the province of Katanga. Military courts are fighting an uphill battle against crumbling infrastructure, poor facilities, and the lack of legal training for practitioners, relevant legal texts, and adequate security for detainees and prisoners alike. Military tribunals have jurisdiction over both military and certain civilian criminal cases. Structural parallels to the U.S. justice system, as well as Congolese interest in American participation, provide an opportunity for U.S.-Congolese cooperation. The Mission has therefore made military judicial sector support a high priority. End summary.

12. (SBU) Poloff's visits to military tribunals in Kalemie and Lubumbashi and to the Kalemie prison painted a stark picture of the faults in the Congolese military justice system. While the situation is dire everywhere, the reality in Katanga is as bad as, if not worse than, other areas in the DRC. Nevertheless, military prosecutors, judges and other officials remain eager for U.S. advice and assistance. Collaboration with MONUC Rule of Law personnel, and discussion with other donors, reveal that very little assistance is planned for the military justice system. As a result, Post has identified this sector as one of the areas with the greatest need and the greatest potential for successful intervention.

-----  
Military Tribunal in Kalemie  
-----

13. (U) In Kalemie, a functioning military court hears cases in a facility plagued by abysmal infrastructure. In the courtroom, there is a single battered desk from which the judge presides, yet no benches or chairs for any other participants. Ancient bench supports remain embedded in the cement floor without seats laid across them. Planks are sometimes brought in to create temporary seats for witnesses, victims, and their supporters -- or not.

14. (U) Military judges' offices are bare; they lack even basics such as copies of current laws, legal texts and reference books. In one office, case files were piled on its single shelf. Despite the efforts of the recent transitional government to update the legal code, one weary magistrate made continual reference to a battered and much-used copy of the "Code Penal Zairoise." He stated that he had never seen a copy of the recently-passed (and immediately relevant) Law Against Sexual and Gender-Based Violence.

15. (U) Given the lack of basic office furniture, the lack of

equipment was no surprise. Computers, printers, photocopiers, and internet access are all a distant dream. The five magistrates who worked out of the Kalemie tribunal shared one vintage-era manual typewriter to document all cases and record courtroom proceedings.

¶6. (U) After giving a tour of the tribunal, the magistrate asked if poloff would like to visit the "cachot" (literally "dungeon," but in common usage in the DRC a temporary holding cell or make-shift jail). The "cachot" which housed detainees waiting for trial and those awaiting transport to the prison was a small building approximately 12 feet by 15 feet. It had no windows, minimal ventilation, no lights, no electricity, no running water, and no toilet facilities. The single wooden door was bolted with a padlock, barricaded with stones, and guarded by four soldiers.

¶7. (U) When the door was opened, the eleven men laying on the cement floor inside recoiled from the light. The magistrate explained that most were soldiers accused of petty crimes; three had already been convicted but had not been moved (after several weeks) to the prison due to lack of transport. Some of the occupants had been there for months.

-----  
Kalemie Prison  
-----

¶8. (U) The Kalemie prison houses all detainees in the region, both civilian and military. Its single greatest challenge is security. The building, dating from 1928, has a brick and mortar shell that can be penetrated within several hours using only a spoon. The prison was originally built

KINSHASA 00000129 002 OF 003

next to a small river, but time and erosion have so damaged the site that approximately one quarter of the facility is in danger of crumbling down the bank.

¶9. (U) There are few perimeter lights, and even those are rendered useless during frequent blackouts. There is no security wire around the top of the walls; prisoners have been known to boost one another over the top when the guards aren't watching closely. One of the magistrates described detention in the facility as "voluntary imprisonment," adding that there had been 44 separate escapes in 2006 alone.

¶10. (U) There are close to 200 prisoners at the Kalemie facility, including 13 women, a handful of juveniles, and three infants living there with their mothers. Some of the prisoners are violent criminals, and thirty have been condemned to death. The local magistrate lamented the impossibility of transferring the most dangerous prisoners to a more secure facility, citing the lack of vehicles, gasoline, and costs to effect a secure transfer.

¶11. (U) As in most Congolese prisons, prisoners do not eat unless their families bring them food and pay off (or provide food to) the guards. Nevertheless, these prisoners are relatively fortunate; being from the immediate area, they have family members nearby to assist, and while thin, none of them were visibly starving.

-----  
Military Tribunal in Lubumbashi  
-----

¶12. (U) Even the regional military tribunal headquarters in Lubumbashi, although superior to facilities in the outlying regions, is beset by the same deficiencies: legal texts and professional materials; furniture, modern office equipment and supplies; and the means to manage security and transport of prisoners.

¶13. (U) When asked about the greatest challenges, the president of the military court in Lubumbashi stated that the

system needs "everything from bricks to paper." Echoing his provincial colleagues, he emphasized that modernization of the system required professional training, significant material support, and security at every level in the military justice process.

-----  
Military Jurisdiction  
-----

¶14. (U) Congolese law, similar to the American system, makes a distinction between civil and military jurisdiction. However, it stipulates trial in a military court when the defendant is a soldier, a policeman, or a civilian who has used a "weapon of war" in the commission of a crime. In some cases, jurisdiction is clear and unambiguous, such as when a soldier is accused of rape, looting, or murder. Justification for military jurisdiction is much more murky in other cases, such as a civilian accused of committing a crime -- usually against another civilian -- with a "weapon of war."

-----  
The Future?  
-----

¶15. (U) Conditions in Katanga military tribunals are unfortunately representative of courts throughout the DRC. Those working in the military justice sector are managing the best they can in a broken system. Most of the military magistrates we spoke with in Katanga are hopeful that the new Congolese government, with international support, will address the problems and improve the system.

¶16. (U) Even if the new government is able to enact broad military justice sector reforms, military tribunals must continue to manage the flood of cases already before them. Long-term reform will take time and cannot alleviate the immediate strains or address the urgent needs of the existing system.

-----  
Comment  
-----

KINSHASA 00000129 003 OF 003

¶17. (SBU) The clear needs in the DRC's military justice system, combined with acknowledged American expertise, create a unique opportunity for U.S. engagement. Targeted U.S. assistance programs could have an immediate, visible impact and would enhance the DRC's military effectiveness by addressing military impunity, a major security deficit. The Congolese have expressed interest in U.S. involvement and other donors are not committed to assistance in this sector. Post is therefore pursuing opportunities to provide support to the military justice system. End comment.  
MEECE